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Attorney for Montana Insurance Department

BEFORE THE STATE AUDITOR;  
EX-OFFICIO COMMISSIONER OF INSURANCE  
HELENA, MONTANA

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|                                |   |                             |
|--------------------------------|---|-----------------------------|
| IN THE MATTER OF:              | ) | CASE NO. INS-2005-19        |
|                                | ) |                             |
| RICHARD PANKOWSKI              | ) |                             |
| 278 Freeport Road              | ) | NOTICE OF PROPOSED AGENCY   |
| Pittsburgh, PA, 15238          | ) | DISCIPLINARY ACTION         |
|                                | ) | AND OPPORTUNITY FOR HEARING |
| JEFFERSON PILOT FINANCIAL      | ) |                             |
| INSURANCE COMPANY              | ) |                             |
| 8801 Indian Hills Drive        | ) |                             |
| Omaha, NE 68111                | ) |                             |
|                                | ) |                             |
| JEFFERSON PILOT LIFE INSURANCE | ) |                             |
| COMPANY                        | ) |                             |
| PO Box 21008                   | ) |                             |
| Greensboro, NC 27420-1008      | ) |                             |
|                                | ) |                             |
| Respondents.                   | ) |                             |

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Staff of the Insurance Department (Department) of the office of the State Auditor as Commissioner of Securities of the state of Montana (Commissioner), pursuant to the authority of the Montana Insurance Code §§33-1-101, *et seq.*, MCA (2003), is proposing to the Commissioner that he take specific action against RICHARD PANKOWSKI (Pankowski), an insurance producer licensed in Montana, JEFFERSON PILOT LIFE INSURANCE COMPANY (Jefferson Pilot Life) with a principle place of business located in Greensboro, North Carolina, an approved insurer, and JEFFERSON PILOT FINANCIAL INSURANCE (Jefferson Pilot Financial) with a principle place of business located in Omaha, Nebraska, an approved insurer, named above for violations of the Montana Insurance Code. The Commissioner has authority to

take such action under the provisions of Sections 33-1-102, 33-1-301, 33-1-317, 33-1-1302, 33-17-201, 33-17-1001, and 33-18-102, (2003) MCA.

In particular, the Insurance Department's staff is recommending specific action against Pankowski, Jefferson Pilot Life and Financial including imposition of appropriate fines, appropriate restitution with interest and revocation or suspension of Respondents' registrations and licenses pursuant to the provisions of the Montana Insurance Code.

Service of process is pursuant to Section 33-1-314 (4), MCA.

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action.

### **ALLEGATIONS**

1. The time period relevant to this action is June 2003 through July 2004.
2. Richard Pankowski (Pankowski) became a licensed insurance producer on or about October 31, 2003, identified with license number 946584.
3. Pankowski became appointed to sell insurance for Jefferson Pilot Life and Jefferson Pilot Financial on or about November 6, 2003.
4. Pankowski began contacting chiropractors in Montana in early 2003 holding himself out as a business consultant doing business as or for Customized Business Strategies, Inc., (CBS) located in Pittsburgh, Pennsylvania.
5. Pankowski contacted MW, a chiropractor living and conducting business in Montana. Pankowski entered into a consulting contract with MW for purposes of business consulting on or about July 8, 2003. A check for \$3,000 issued from MW's business account to

CBS on or about July 1, 2003 and is recognized in the consulting contract as payment in full for services offered and rendered during the term of the contract.

6. Pankowski then offered and sold a “Key Man” life insurance policy from Jefferson Pilot Financial to MW as part of the business consultation. Pankowski indicated this was an important addition to MW’s business plan and that it was a powerful savings tool for the business because it could be written off as a business expense. MW already had a life insurance policy when Pankowski advised MW to purchase the “Key Man” policy.

7. The application for the “Key Man” policy MW purchased indicates MW signed it in Pittsburgh, Pennsylvania. However, MW indicates the application for this policy was signed in Montana. The application MW signed was dated as signed on September 9, 2003.

8. On or about July 31, 2003, RG signed an application for life insurance with Jefferson Pilot Financial. Pankowski provided the application to RG as part of Pankowski’s consultation provided through Pankowski’s business, CBS.

9. Pankowski advised RG to transfer three whole life policies RG owned into one Jefferson Pilot product. Pankowski convinced RG that this was a better retirement vehicle than the whole life policies RG owned. Pankowski failed to file any replacement forms regarding this change from the whole life policies to the Jefferson Pilot life insurance product.

10. The application indicates RG signed it in Pittsburgh, Pennsylvania. However, the application was signed in Montana.

11. Pankowski advised RG that the monthly premium for this product would be \$500. The actual cost to RG each month was \$719.54. Additionally, RG was never advised of the \$3,948.85 expense charge associated with the Jefferson Pilot Financial product, nor was RG advised of the \$277.75 monthly charge that was in addition to the premium charge.

12. RG experienced a devastating loss to RG's business in or about July 2004 causing RG to close the business for a period of at least eight months. During that period, RG sought to have a reduction in his premium. At that time the premiums were deducted from the policy. RG contacted Pankowski's business, CBS. No response was provided from CBS. RG then contacted Jefferson Pilot Financial who provided RG with a "Change of Policy" form. RG sought advice from CBS on how to complete the form. Again no response was provided from CBS. A written request to change RG's representative from Pankowski to a Jefferson Pilot Financial advisor located in Montana was submitted to Jefferson Pilot Financial on or about January 4, 2005. More time passed without response from either Jefferson Pilot Financial, CBS, or Pankowski. In or around April 2005, RG received another form to change the amount of premium and policy. To date the premium remains at the original cost.

13. On or about September 29, 2003, SA signed an application for life insurance with Jefferson Pilot Financial. Pankowski was the agent on that policy.

14. Sometime in July 2003, Pankowski met with DS in Pankowski's capacity as a business consultant with his business, CBS. Pankowski was hired in his consulting capacity to advise DS with regard to DS business. On or about September 29, 2003, DS signed an application for life insurance with Jefferson Pilot Financial. Pankowski was the agent on that policy.

15. The application DS signed does not indicate that other life insurance policies were transferred or cashed in to purchase the Jefferson Pilot product. However, DS indicates that such transaction did occur and that DS surrendered the policies identified in the application for the purpose of purchasing the Jefferson Pilot product. No replacement forms were filed as a result of this transaction.

16. Sometime in 2003, Pankowski entered into a consulting contract with JS to provide business consultation with his company, CBS. On or about September 30, 2003, JS signed an application form for life insurance with Jefferson Pilot Financial. Pankowski was the agent for this transaction.

17. On or about October 15, 2003, MB signed a contract to purchase a Jefferson Pilot Life annuity. Pankowski was the agent for this transaction. It appears the date was altered next to three of the signatures on this application, without initials or signatures indicating knowledge of the change. Three of the signatures appear to have been changed to reflect November (11) as the month the signatures were affixed to the documents, rather than October (10) when the signatures were actually affixed to the documents.

18. The application forms used by Pankowski when he solicited sales of Jefferson Pilot life insurance products were not approved in Montana in three specific instances: the application signed by MW, RG and an application signed by JH. All applications were signed in Montana and are required to be approved by the Montana Insurance Department.

19. The policies issued by Jefferson Pilot Financial were not on forms approved for use in Montana in three specific instances: policies issued to MW, RG and JH.

Based on the foregoing allegations, if proven, the Department relies on the following:

### **CONCLUSIONS OF LAW**

1. The State Auditor is the Commissioner of Insurance pursuant to section 2-15-1903, MCA.

2. The insurance department is under the control and supervision of the Commissioner pursuant to section 33-1-301, MCA.

3. A person may not transact a business of insurance in Montana or a business relative to a subject resident, located or to be performed in Montana without complying with the applicable provisions of the Montana Insurance Code pursuant to section 33-1-102, MCA.

4. The Commissioner shall administer the Department of Insurance to protect insurance consumers pursuant to section 33-1-311, MCA.

5. Pankowski violated §33-17-201, MCA, by conducting insurance business in Montana without proper licensure on at least six occasions.

6. Pankowski violated §33-17-236, MCA, by holding himself out as representing Jefferson Pilot Life Insurance Company and Jefferson Pilot Financial Insurance Company without an appointment to do so on at least six (6) occasions.

7. Pankowski violated §33-17-502, MCA, by providing insurance consultation services in connection with his business CBS, without being properly licensed to do so on at least four (4) occasions.

8. Pankowski violated §33-17-511, MCA, by receiving consideration for insurance consultation services he provided in Montana without a written memorandum that included his insurance producer's license number, outlined the services and the associated costs on at least four (4) occasions.

9. Pankowski violated §33-17-512, MCA, by receiving compensation for insurance consultation services he provided in Montana when he also received a commission for selling an insurance product on at least four (4) occasions.

10. Pankowski violated §33-15-402 (4), MCA by altering the dates on an application he received in Montana, without the written consent of the applicant, MB.

11. Pankowski violated §33-18-204, MCA, by inducing two Montana insurance customers to surrender and exchange their life insurance policies for the purpose of purchasing a product for which Pankowski would receive a commission.

12. Pankowski violated §33-18-204, MCA, and ARM §§6.6.303 and 306 by failing to file replacement forms on at least two (2) occasions.

13. Pankowski violated §33-17-1001 (1) (c), (f), MCA on at least six occasions.

14. Pankowski violated §33-1-1302, MCA on at least one occasion when he represented that CBS would act as the insurance agent for purposes of servicing the contract and then was completely unavailable through CBS or any other contact to provide required assistance to RG.

15. Jefferson Pilot violated §33-1-501, MCA, by issuing applications and policies on forms that were not approved for use in Montana involving three Montana customers.

Based on the foregoing, the Department seeks the following:

### **RELIEF SOUGHT**

1. Order Pankowski, Jefferson Pilot Financial and Jefferson Pilot Insurance to pay restitution to the victims in this case, including 10% interest from the date of the wrong-doing, pursuant to §33-1-1301, MCA.

2. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-17-201, MCA, pursuant to § 33-1-317, MCA.

3. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-17-236, MCA, pursuant to § 33-1-317, MCA.

4. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-17-502, MCA, pursuant to § 33-1-317, MCA.

5. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-17-511, MCA, pursuant to § 33-1-317, MCA.

6. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-17-512, MCA, pursuant to § 33-1-317, MCA.

7. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-15-402, MCA, pursuant to § 33-1-317, MCA.

8. Order Respondent Pankowski to pay fines not to exceed \$5,000 for each identifiable violation of §33-18-204, MCA, pursuant to § 33-1-317, MCA.

4. Order Respondent Pankowski's license in Montana suspended and or revoked for violating the provisions of § 33-17-1001, MCA, pursuant to § 33-17-1001, MCA.

5. Order Respondents Jefferson Pilot Financial and Jefferson Pilot Insurance to pay fines not to exceed \$25,000 for each identifiable violation of §33-1-501, MCA, pursuant to § 33-1-317, MCA.

### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana insurance customers to:

1. Issue a cease and desist order barring Pankowski, Jefferson Pilot Financial and Jefferson Pilot Insurance from further violations of the Insurance Code;

2. Suspend or revoke Jefferson Pilot Financial's certificate of authority;

3. Suspend or revoke Pankowski's insurance producer's license;

5. Suspend or revoke Jefferson Pilot Life's certificate of authority;



5. Order Respondents to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

6. Order Respondents to pay restitution to Complainants in an amount and upon such terms and conditions, including the statutory 10% per annum interest on the losses Complainants incurred, as supported by the evidence and determined at hearing of this matter; and

7. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, sections 2-4-601, MCA, and following, including Section 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Section 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse

action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### CONTACT WITH INSURANCE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

#### POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within fifteen (15) days, will result in the entry of a default order imposing the disciplinary sanctions against you and your license, without further notice to you, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

DATED this 16<sup>th</sup> day of November 2005.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Insurance

By: Roberta Cross Guns  
Roberta Cross Guns  
Special Assistant Attorney General